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ORDER E-FILED ON 9/18/06

Attorneys for Plaintiff and Counter-Claim Defendant
 FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

FEDERAL INSURANCE COMPANY, an
 Indiana corporation,

Plaintiff,

vs.

ST. PAUL FIRE & MARINE INSURANCE
 COMPANY, a Minnesota corporation,

Defendant.

Case No: C 05-01878 JW

**STIPULATION AND PROTECTIVE
 ORDER RE THIRD PARTY
 CONFIDENTIAL DISCOVERY
 MATERIALS AND ADDENDUM TO
 PROTECTIVE ORDER**

(MODIFIED BY THE COURT)

AND RELATED COUNTERCLAIMS.

WHEREAS, Plaintiff FEDERAL INSURANCE COMPANY ("Plaintiff" and/or
 "Federal") has subpoenaed documents from third party ATMEL CORPORATION ("Atmel").
 Those documents include depositions and discovery taken in the action entitled *Atmel
 Corporation v. St. Paul Fire & Marine Insurance Company and Related Counterclaim*, Case
 No. C04-04082 SI, filed in the United States District Court for the Northern District of
 California, San Francisco Division (the "*Atmel Action*"). Atmel considers some or all of the
 information sought by Federal to be confidential and proprietary and not generally known to
 the public;

1 WHEREAS, the disclosure of such information is subject to other Protective Orders in
2 the *Atmel Action*;

3 WHEREAS, Atmel contends that the public disclosure of such confidential and
4 proprietary information will result in irreparable injury to Atmel's competitive advantages and
5 position;

6 WHEREAS, Atmel takes no position regarding the relevance of the sought materials,
7 and seeks not to be burdened or damaged by access by the parties in this action to such
8 materials;

9 WHEREAS, Federal Insurance seeks access to this information in connection with the
10 above entitled action;

11 WHEREAS, counsel for all parties herein have consented to a Protective Order
12 allowing the designation of documents and/or information produced by Atmel as
13 "ATTORNEYS EYES ONLY – CONFIDENTIAL,"

14 THEREFORE, IT IS HEREBY STIPULATED that:

15 1. This Order shall apply to all discovery material produced by Atmel, including
16 but not limited to that which has been designated as "ATTORNEYS EYES ONLY –
17 CONFIDENTIAL" pursuant to this Protective Order. (See Addendum to Protective Order).

18 2. All materials produced by Atmel shall be used solely for purposes of this
19 litigation, and under no circumstances shall be used against Atmel. This limitation applies
20 regardless of the designation of the materials, and the parties to this action agree to this
21 limitation, regardless of any further modification of this Protective Order or the designation of
22 any particular materials.

23 3. The term "ATTORNEYS EYES ONLY – CONFIDENTIAL" shall encompass
24 all information contained herein in documents, deposition testimony and exhibits, and
25 interrogatory answers produced by Atmel and which were produced in the *Atmel Action*.

26 4. If Atmel wishes to declare any discovery material it produces, or any portion
27 thereof "ATTORNEYS EYES ONLY – CONFIDENTIAL," then it shall designate such
28

1 material as "Outside Attorneys' Eyes Only – Confidential" by having the material designated as
2 such by an appropriate legend that does not render any portion of the document illegible.

3 5. Material designated as "ATTORNEYS EYES ONLY – CONFIDENTIAL" may
4 be disclosed solely to the following, unless the Court rules that there may be further disclosure:

- 5 a. The parties' attorneys of record, and legal support personnel working
6 under the direct supervision of such counsel, with disclosure only to the
7 extent necessary to perform work directly on this litigation;
- 8 b. This Court, and its personnel;
- 9 c. A party's bona fide independent experts or consultants, provided that:
10 i. Such experts or consultants are not employed by, or affiliated
11 with, a party or any competitor of the person about which the
12 material relates regarding the subject matter of the material
13 disclosed; and
14 ii. The expert has executed a statement in the form of Exhibit A
15 attached hereto agreeing to be bound by the terms of this
16 Protective Order.
- 17 d. Any court reporter employed in connection with a deposition or
18 arbitration in this litigation;
- 19 e. The authors, sender, addressees, and copy recipients of the
20 ATTORNEYS EYES ONLY – CONFIDENTIAL material, or other
21 persons who have been shown either by testimony or documentary
22 evidence to have previously obtained the material without violation of
23 any protective order in this or any other action;
- 24 f. Any alternative dispute professional (e.g., arbitrator, mediator, etc.) in
25 this case, if any, and employees and similar personnel of said
26 individuals, provided that:

i. The alternative dispute professional and his or her staff have executed a statement in the form of Exhibit A attached hereto agreeing to be bound by the terms of this Protective Order.

g. Any discovery referee in this case, if any, and employees and similar personnel of said individuals;

h. Up to four in-house employees of a party who are not engaged in any underwriting activities provided that:

i. Each such employee executes the undertaking in the form of Exhibit A attached hereto agreeing to be bound by the terms of this Protective Order; and

ii. Upon request counsel for the party will provide a copy of the undertaking to the party or third-party who designated the materials.

i. Any person approved in writing, in advance of disclosure, by Atmel's in-house counsel.

These restrictions shall not impose any limit on a party to this action regarding its own confidential information, provided it is not subject to this or any other protective order.

6. If any party wishes to disclose any material designated as "ATTORNEYS EYES ONLY – CONFIDENTIAL" to any person not described in Paragraph 5 of this Protective Order, permission must be requested from the designating party in writing. In connection with such request, the party proposing the disclosure agrees identify the materials it wishes to disclose with particularity, including but not limited to providing a copy of the materials immediately upon request. If the designating party objects to the proposed disclosure, no such disclosure shall be made unless this Court orders otherwise. Failure for the proposed person to agree to abide by the terms of this protective order by signing the undertaking in the form of Exhibit A shall constitute legitimate grounds for objection.

7. Any person to whom "ATTORNEYS EYES ONLY – CONFIDENTIAL" material may be disclosed pursuant to Paragraph 5 (c), (d), (f), (g), (h), and (i) above shall first

1 be shown and read a copy of this Protective Order and shall agree in writing to be bound by its
 2 terms by signing a copy of the undertaking in the form of Exhibit A. Counsel for the party
 3 obtaining the undertaking will retain the original signed agreement. Notwithstanding the
 4 foregoing, counsel, their legal staff and the parties to this action shall not be required to sign a
 5 copy of the confidentiality agreement prior to receiving any of ATTORNEYS EYES ONLY –
 6 CONFIDENTIAL Material, but shall be bound by the terms of this Protective Order by the
 7 signature of their respective counsel herein. Additionally, the Court and its personnel and
 8 persons falling within the categories set forth in Paragraph 5 shall not be required to sign a copy
 9 of the confidentiality agreement prior to receiving any ATTORNEYS EYES ONLY –
 10 CONFIDENTIAL Material.

11 8. If ATTORNEYS EYES ONLY – CONFIDENTIAL material is included in any
 12 derivative material such as answers to interrogatories or other written discovery, that portion of
 13 such interrogatory answers, written discovery responses, or other materials shall be marked
 14 with a legend “ATTORNEYS EYES ONLY – CONFIDENTIAL, Subject to Protective Order”
 15 and separately bound.

16 9. If any paper to be filed or lodged with the Court in this action in connection with
 17 a discovery motion or proceeding discloses or contains ATTORNEYS EYES ONLY –
 18 CONFIDENTIAL material, then such paper shall be ^{submitted with a request for sealing} ~~filed or lodged with the Court only in an~~
 19 ~~envelope under seal. Except for the Court and the Court's personnel, no such sealed envelope~~
 20 ~~pursuant to Civil Local Rule 79-5.~~
 21 ~~shall be opened without an order from the Court identifying by name the person or persons who~~
 22 ~~may have access to the sealed material, and specifically designating which portions of the~~
 23 ~~sealed file may be revealed to them. When papers disclosing or containing ATTORNEYS~~
 24 ~~EYES ONLY – CONFIDENTIAL material are filed under seal in connection with a discovery~~
 25 ~~motion or proceeding, the cover of such paper shall contain the caption of this action and the~~
 26 ~~following legend:~~

26 This envelope is filed under seal pursuant to Paragraph ~~==~~ of the
 27 Stipulation and Protective Order Re Confidentiality of Admet
 28 Discovery Material entered on ~~=====~~, 2006. This
 envelope contains documents that are subject to an Order
 governing discovery and the use of confidential discovery

1 ~~material. Pursuant to such Order, this envelope shall not be~~
2 ~~opened nor the contents thereof displayed or revealed except by~~
3 ~~Order of the Court.~~

4 10. Other than in connection with a discovery motion or proceeding, no party may
5 submit a paper disclosing or containing ATTORNEYS EYES ONLY – CONFIDENTIAL
6 material to the Court prior to trial unless that party has notified Atmel. Such notification shall
7 be completed at least fourteen (14) days prior to the submission of said paper, and shall include
8 a copy of the relevant document to be disclosed. For purposes of this Protective Order, notice
9 to Atmel shall take the form of overnight delivery addressed to Attn: Senior Litigation Counsel,
10 Legal Department, Atmel Corporation, 2325 Orchard Parkway, San Jose, California 93151.
11 The parties may agree to accept another method of notice for the purpose of this notification
12 requirement and such notification will satisfy this requirement without leave of Court provided
13 that Atmel expressly agrees in writing to that method of notice.

14 11. Inadvertent failure to designate any information “ATTORNEYS EYES ONLY –
15 CONFIDENTIAL ” pursuant to this Protective Order shall not constitute a waiver of any
16 otherwise valid claim for protection, so long as such claim is asserted within a reasonable time
17 after the discovery of the inadvertent failure. At such time, arrangements shall be made for the
18 designating party to substitute properly labeled copies. No party or its counsel shall be in
19 violation of this Protective Order for disseminating, prior to receiving notice under this
20 paragraph, any ATTORNEYS EYES ONLY – CONFIDENTIAL material not previously
21 designated as such, provided that the receiving counsel takes immediate steps to recall and
22 return or destroy all copies of the inadvertently disclosed materials to prevent further disclosure.

23 12. Any party may, after production of ATTORNEYS EYES ONLY –
24 CONFIDENTIAL material under this Protective Order, object to its designation by notifying
25 the designating party in writing of that objection and specifying the designated material to
26 which the objection is made. Upon request, the objecting party shall provide a copy of the
27 materials that are the subject of the objection. The parties shall, within fifteen (15) days of
28 service of the written objections or the delivery of the copies whichever is later, confer
concerning the objection. If the objection is not resolved, the objecting party may file and serve
STIPULATION AND PROTECTIVE ORDER RE THIRD PARTY CONFIDENTIAL DISCOVERY MATERIALS - 6 -

1 a noticed motion to resolve the dispute over the designation of the material as "ATTORNEYS
 2 EYES ONLY – CONFIDENTIAL" and the designating party shall bear the burden of proof that
 3 the material so designated is entitled to protection. If a motion is filed, information subject to
 4 the dispute shall be treated consistently with its designation, until such time as the Court rules
 5 that such material should not be treated as "ATTORNEYS EYES ONLY – CONFIDENTIAL"
 6 or should have some other protection.

7 13. If another a court or agency or other authorized entity subpoenas or orders
 8 production of ATTORNEYS EYES ONLY – CONFIDENTIAL Material that a party has
 9 obtained under the terms of this Protective Order, such party shall promptly notify the
 10 designating party of the existence of the subpoena or order and shall not produce ATTORNEYS
 11 EYES ONLY – CONFIDENTIAL Material until the designating party has had reasonable time
 12 to object or otherwise take appropriate steps to protect the material. (See Addendum to Protective
 13 Order).

14 14. This Protective Order shall not prevent any party from moving this Court upon
 15 noticed motion with notice given to the designating party for an order that ATTORNEYS
 16 EYES ONLY – CONFIDENTIAL Material may be disclosed in some manner other than this
 17 Protective Order otherwise would allow. This Protective Order is without prejudice to the right
 18 of any party to seek its modification from the Court. This Protective Order shall remain in
 19 effect until it is modified, amended or rescinded by the Court.

20 15. Any party seeking to use ATTORNEYS EYES ONLY – CONFIDENTIAL
 21 Material at trial, shall meet and confer with the designating party regarding the procedures
 22 appropriate for trial. Such conference shall take place at least thirty (30) days prior to the pre-
 23 trial conference, so that the parties may confer and then present any requested procedures to the
 24 Court.

25 **For a period of six months after the conclusion of all proceedings in this**
 26 16. This Court shall have continuing jurisdiction to modify, amend, enforce, **action,**
 27 interpret or rescind this Protective Order ~~notwithstanding the termination of this action.~~

28 17. At the conclusion of all proceedings in this action, whether by judgment,
 settlement or otherwise, all of ATTORNEYS EYES ONLY – CONFIDENTIAL Materials
 obtained in this action, all documents and notes containing, summarizing or otherwise derived

1 from such materials, and all copies of any such material not on file with the Court shall be
 2 returned to counsel for the designating party or else destroyed, except that counsel of record in
 3 the this action may keep for its records one copy of any pleading, deposition, or deposition
 4 exhibits marked "ATTORNEYS EYES ONLY - CONFIDENTIAL." Moreover, counsel of
 5 record may retain one copy of all work product; provided, however, that any work product
 6 containing or reflecting ATTORNEYS EYES ONLY - CONFIDENTIAL Material shall remain
 7 subject to the terms of this Protective Order.

8 18. Within sixty (60) days following the conclusion of all proceedings in this action,
 9 counsel for any party shall certify to the designating party that such counsel has fully complied
 10 with the terms of paragraph 17.

11 Dated: September 13, 2006

NEWTON REMMEL

12
 13 By: 

14 Stephen L. Newton
 15 Melissa A. Dubbs
 Attorneys for Plaintiff
 FEDERAL INSURANCE COMPANY

16 Dated: September 11, 2006

ZELLE, HOFMANN, VOELBEL, MASON &
 GETTE, LLP

17
 18
 19 By: 

20 Marc J. Shrake
 Attorneys for Defendant
 ST. PAUL FIRE AND MARINE
 INSURANCE COMPANY

21
 22 Dated: September _____, 2006

BARGER & WOLEN LLP

23
 24 By: _____

25 Robert G. Levy
 Thomas R. Beer
 Attorneys for Counterclaim Defendant
 NATIONAL UNION FIRE INSURANCE
 COMPANY OF PITTSBURGH, PA

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 27
 28 ////

1 from such materials, and all copies of any such material not on file with the Court shall be
 2 returned to counsel for the designating party or else destroyed, except that counsel of record in
 3 the this action may keep for its records one copy of any pleading, deposition, or deposition
 4 exhibits marked "ATTORNEYS EYES ONLY - CONFIDENTIAL." Moreover, counsel of
 5 record may retain one copy of all work product; provided, however, that any work product
 6 containing or reflecting ATTORNEYS EYES ONLY - CONFIDENTIAL Material shall remain
 7 subject to the terms of this Protective Order.

8 18. Within sixty (60) days following the conclusion of all proceedings in this action,
 9 counsel for any party shall certify to the designating party that such counsel has fully complied
 10 with the terms of paragraph 17.

11 Dated: September _____, 2006

NEWTON REMMEL

12
13 By: _____

14 Stephen L. Newton
 15 Melissa A. Dubbs
 Attorneys for Plaintiff
 16 FEDERAL INSURANCE COMPANY

17 Dated: September _____, 2006

ZELLE, HOFMANN, VOELBEL, MASON &
 18 GETTE, LLP

19 By: _____

20 Marc J. Shrake
 Attorneys for Defendant
 21 ST. PAUL FIRE AND MARINE
 INSURANCE COMPANY

22 Dated: September 8, 2006

BARGER & WOLEN LLP

23
24 By: Thomas R. Beer

25 Robert G. Levy
 Thomas R. Beer
 Attorneys for Counterclaim Defendant
 26 NATIONAL UNION FIRE INSURANCE
 27 COMPANY OF PITTSBURGH, PA

28 /////

1 Dated: September ____, 2006

ATMEL CORPORATION

2
3 By: CYNTHIA BRIGHT
4 Its: SR. LITIGATION COUNSEL.

5 **ORDER**

Pursuant to stipulation (as modified by the court),

6 ~~For good cause appearing,~~ **IT IS SO ORDERED.**

7
8 Dated: September 18, 2006

Magistrate Judge of the United States District Court

9 **HOWARD R. LLOYD**

EXHIBIT A

EXHIBIT A

AGREEMENT REGARDING CONFIDENTIAL DISCOVERY MATERIAL

1. I, _____, have read a copy of the Stipulation and Protective Order ("Order") entered in Civil Case No. C 05-01878 JW in the United States District Court for the Northern District of California, concerning the confidentiality of certain discovery material.

2. I have had the meaning and effect of the Order explained to me by the persons providing me with ATTORNEYS EYES ONLY – CONFIDENTIAL Materials as that term is defined in the Order. I understand the terms and conditions of the Order.

3. I understand that, as provided in the Order, I may be permitted access to ATTORNEYS EYES ONLY – CONFIDENTIAL Material. I agree to abide by the terms and conditions set forth in the Order, including refraining from any further disclosure of any copies, excerpts, summaries or abstracts of such ATTORNEYS EYES ONLY – CONFIDENTIAL Material to anyone except as expressly provided in the Order. I further acknowledge and agree that all ATTORNEYS EYES ONLY – CONFIDENTIAL Material received by me shall be used only in connection with this litigation and shall be returned to counsel of record with whom I have consulted upon request or at the conclusion of the case.

4. I am not employed by or affiliated with any party in this action or any competitor of Atmel Corporation or other third party, _____.

5. I consent to the jurisdiction of the United States District Court for the Northern District of California for the purposes of enforcing this Order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at _____.

ADDENDUM TO PROTECTIVE ORDER

Federal Ins. Co. v. St. Paul Fire & Marine Ins. Co.,
Case No. C05-01878 JW (HRL)

IT IS HEREBY ORDERED as follows:

Paragraph 1: Designation of documents

The designating party must take care to limit any such designation to specific material that qualifies under the appropriate standards and to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass or indiscriminate designations are prohibited. Designations that are clearly shown to be unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the designating party to sanctions.

Paragraph 13: Protected Material Subpoenaed or Ordered Produced in Other Litigation

The purpose of imposing this notice requirement is to alert the interested parties to the existence of this Protective Order and to afford the designating party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The designating party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a party in this action to disobey a lawful directive from another court.

5:05-cv-1878 Notice will be electronically mailed to:

Thomas R. Beer tbeer@barwol.com, vfoo@barwol.com; sf3@barwol.com; jlee@barwol.com
Melissa A Dubbs mdubbs@newtonremmel.com, edresser@newtonremmel.com
William Lee wlee@barwol.com, ntorres@barwol.com; mdimapasoc@barwol.com
Stephen Newton efile@newtonremmel.com, snewton@newtonremmel.com
Marc J. Shrake mshrake@zelle.com, vjames@zelle.com; ekimble@zelle.com; gpalanca@zelle.com;
abedford@zelle.com

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.